



Federal Communications Commission  
Washington, D.C. 20554

May 4, 2009

DA 09-1013

Todd Slamowitz  
Lukas, Nace, Gutierrez & Sachs Chartered  
1650 Tysons Boulevard, Suite 1500  
McLean VA 22102

Re: Smith Bagley, Inc. Request for Withdrawal of Petition to Deny, File No. 0003657382

Dear Mr. Slamowitz:

On January 2, 2009, Smith Bagley, Inc. ("Smith Bagley") filed a petition to deny<sup>1</sup> an application ("Application") filed by ALLTEL Communications of New Mexico, Inc. ("ALLTEL") seeking modification of Call Sign KNKN270 to add certain unserved portions of CMA553 - New Mexico 1 - San Juan ("New Mexico 1").<sup>2</sup> Smith Bagley alleged that the proposed service area boundary of certain cell sites reported in the Application extend into Smith Bagley's New Mexico 1 cellular geographic service area ("CGSA"), licensed under Call Sign KNKR316, and its CMA320 - Arizona 3 - Navajo CGSA, licensed under Call Sign KNKN208.<sup>3</sup> In its Petition, Smith Bagley stated that it was in the process of negotiating a service area boundary extension with ALLTEL to allow ALLTEL to extend into Smith Bagley's New Mexico 1 CGSA in accordance with section 22.912 of the Commission's rules.<sup>4</sup>

On January 6, 2009, Smith Bagley filed a Request to Withdraw its Petition ("Request to Withdraw").<sup>5</sup> Smith Bagley filed an amendment to its Request to Withdraw on April 9, 2009.<sup>6</sup> Smith Bagley explains that it is withdrawing its Petition because Smith Bagley and ALLTEL entered into an agreement to allow ALLTEL to extend into Smith Bagley's licensed service area in the New Mexico 1 market.<sup>7</sup> Further, Smith Bagley states that its "counsel was unaware of the extension agreement and proceeded to file the [P]etition . . ." and that, "[u]pon Smith Bagley's counsel learning of the extension agreement, [Smith Bagley] unilaterally withdrew the petition to deny."<sup>8</sup> In its Request to Withdraw, Smith Bagley includes a certification in support of its request to withdraw the Petition<sup>9</sup> pursuant to Section 1.935 of the Commission's Rules.<sup>10</sup>

---

<sup>1</sup> Petition to Deny of Smith Bagley, Inc. (filed Jan. 2, 2009) ("Petition").

<sup>2</sup> Application for Modification of License, File No. 0003657382 (filed Nov. 24, 2008).

<sup>3</sup> Petition at 1.

<sup>4</sup> 47 C.F.R. § 22.912; Petition at 1-2.

<sup>5</sup> Request to Withdraw Petition to Deny of Smith Bagley, Inc. (filed Jan. 6, 2009).

<sup>6</sup> Amendment to Request to Withdraw Petition to Deny of Smith Bagley, Inc. (filed Apr. 9, 2009).

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.* at 1-2.

<sup>9</sup> Request to Withdraw at 1 and Attachment (Certification of Richard Watkins, Vice-President, Smith Bagley, Inc.). The certification signed by Richard Watkins under the penalty of perjury states that "neither Smith Bagley, Inc., nor any of its principals, has paid or received, or will pay or receive, any money or other consideration in exchange for the withdrawal of the petition to deny filed against the modification application for Call Sign KNKN270 filed by

We have reviewed the Request to Withdraw and find that it raises no substantial or material question of fact under Section 309(d) of the Communications Act, as amended.<sup>11</sup> The Division also finds that the Request to Withdraw complies with section 1.935 of the Commission's Rules.<sup>12</sup> Accordingly, pursuant to sections 0.331 and 1.935 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.935, we approve Smith Bagley, Inc.'s Request to Withdraw its Petition to Deny, filed on January 6, 2009, and dismiss with prejudice Smith Bagley, Inc.'s Petition to Deny, filed on January 2, 2009.

Sincerely,

Katherine M. Harris  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

cc: James E. McDonald  
ALLTEL Communications, LLC  
One Allied Drive, B1F02-D  
Little Rock, AR 72202

---

Alltel Communications of New Mexico, Inc. (FCC ULS File no. 0003657382)." Request to Withdraw at Attachment.

<sup>10</sup> 47 C.F.R. § 1.935.

<sup>11</sup> 47 U.S.C. § 309(d).

<sup>12</sup> 47 C.F.R. § 1.935.